

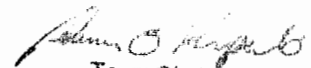
TOWN OF NEWINGTON

CONSERVATION COMMISSION MEETING MINUTES

February 15, 2022

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Town Clerk

This meeting was presented as a Zoom Webinar/Meeting.

I. CALL TO ORDER

Chairman Sadil called the meeting to order at 7:00 p.m.

II. ROLL CALL

Ben Ancona III

John Bachand

John Casasanta

Bernadette Conway

Andreas Sadil

Jeff Wagner

Also present

Renata Bertotti, Town Planner

Erik Hinckley, Inland Wetland Agent

Susan Gibbon, Recording Secretary

Councilor Budrejko, Council Liaison

Councilor Radda, Council Liaison

Chairman Sadil: I will seat Commissioner Conway for Commissioner Paskewich at this time. Let's proceed to Item III, Public Participation on Non-Agenda Items, each speaker limited to 2 minutes.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

(each speaker limited to 2 minutes)

Chairman Sadil: Mr. Hinckley is there anyone on the line?

Mr. Hinckley: Yes. Mr. Zelek, you can go ahead and unmute yourself. Jeff, if you are there, you can unmute yourself.

Mr. Zelek: Sorry for the delay, I couldn't find my mute button.

Mr. Hinckley: No problem.

Mr. Zelek: Can you hear me now?

Mr. Hinckley: Yes we can.

Mr. Zelek: Ok. So, um, I want to talk to you guys a little bit this evening about the Culver Street public hearing. At your December 14th meeting, a member of the public by the name of David Horrigan, from 30 Candlewyck Drive, spoke to you and expressed his concerns regarding the conservation commission's mishandling of the public hearing for Culver Street. Mr. Horrigan pointed out that the commission was given explicit instructions from Erik, Attorney Ancona and Renata no less than four time during the discussion and each time they wanted the

commission the public hearing was closed and there should be no input from anybody outside the commission during deliberation; and that's a long-standing rule with public hearings. As the commissioner...as the commission appears to be leading towards denying the permit and despite the clear instructions, the applicant began to testify to the merits of the site plan. Now that testimony and the exchange with the applicant and the commissioners seems to fill an entire five pages of your meeting minutes. Your December 14th meeting continued after Mr. Horrigan's comments and you did not address Mr. Horrigan's, what I read to be very serious concerns. You met again on January 18th and again, I don't see anything in the record of you addressing the concerns that Mr. Horrigan has risen regarding the public hearing and how it was mishandled. I've been contacted by members of the public regarding the actions of the Conservation Commission for my opinion regarding the record. Now I read through it and I'm quite disturbed when I reviewed the record and saw what had occurred. The record clearly shows that the commission allowed additional comments, and they were lengthy comments and testimony from the applicant after the public hearing was closed. Once the hearing is closed, the Commission is not allowed to have new comments be entered. The commission is to go directly to deliberations and render a decision based on the record that's before it. The applicant should not have injected himself during the deliberations and to me that's a fatal mistake on the part of the applicant to interfere with the deliberations like he did. Now all commissioners bear the responsibility of raising a point of order should they witness a procedural error. The commission was instructed to render a decision based on the record before it and not...did not request that applicant to clarify any items. After the applicant finished his lengthy and unauthorized testimony, the public was denied its right to a rebuttal as the public hearing was closed during the prior months meeting. The public hearing is really there to benefit the public. It is not held so only the applicant can provide his testimony. The public was denied a fair hearing and they were not allowed to speak once the hearing was closed. The applicant, however, was allowed to provide additional lengthy testimony to his advantage. This commission needs to make this right wrong. I mean you really damaged the trust of the public. I'm asking the commission to consider postponing the signing of the Culver Street permit until the commission has fully reviewed this matter. The commission should have the power to rescind its decision if it finds the applicant acted improperly or the hearing was not following legal protocols. The public has lost faith and confidence in the commission and that trust needs to be restored. Any commissioners sitting this evening can introduce a motion of review the actions of the commission and rescind its decision should it find that errors were made during the proceedings. The fault lies mainly with the applicant for speaking after the hearing was closed, but the commission does bear culpability as it did not stop the applicant from his testimony. I'd like to remind the commissioners that you all have taken an oath, and it's a very simple oath, and that oath is to uphold the law to the best of your abilities. If you find the legal format was not followed properly, you need to take action and correct that mistake. Now, you may not be award, but the public has also appealed directly to the town council regarding this issue and it's not only the Conservation Commission, but the Zoning Commission that appeared to have a systemic problem with the rules and regulations not being followed. This is a serious stain on your reputation. Now, I'd like to ask the town council liaisons that are present this evening to please take notice of this issue and address it promptly with the town council. The public's already reached out to you and you should have documentation from the public regarding the inappropriate actions that were taken by both the Wetlands Commission and the Zoning Commission and I'm asking you to take that back to the town council and start to review that process. So, in closing, I'm appealing to the good commissioners sitting this evening to introduce a motion to investigate the events of the November 16th Public Hearing regarding Culver Street and restore the public's trust. All right. I

thank you and I hope you know every one of you will take the appropriate actions. Have a good evening.

Chairman Sadil: Thank you Mr. Zelek. Yes, who's next?

Mr. Hinckley: Next on the line is David, you can unmute yourself.

David Horrigan, 30 Candlewyck Drive: Thank you for allowing me to speak tonight. Well, obviously Mr. Zelek stole all my thunder. Um...I just still can't believe what happened at the December...at the November meeting and how my December testimony was completely ignored. What the commission allowed was illegal; you had direction, clear instructions, four times from town staff to not allow any new information. When it became obvious that the vote was going to be four to three denying the application, especially with the comments of the commission and particularly with the serious concerns expressed by the Chairman. As he was expressing those concerns, somebody much have sent a 911 to Jason down in Pittsburgh, the developer, because out of nowhere he appeared online and began to testify. His testimony, if you look at the YouTube, undoubtedly changed your vote. His testimony was illegal and you need to reverse your vote. We demand that the commission investigate the illegal activity at the November meeting and when you do, you'll have no choice but to void your vote. We are not giving up on this issue and actually public opposition is getting stronger, so please do the right thing, correct your errors sooner rather than later. Thank you.

Chairman Sadil: All right. Mr. Hinckley, is there anyone else?

Mr. Hinckley: Yes, Igor Bochenkov, go ahead Igor. You can unmute yourself.

Mr. Bochenkov: Hello? Igor Bochenkov, thank you so much. Igor Bochenkov, 20 Cobblestone. I completely agree with the remarks made by my neighbors with regards to the proposed Culver Street development. These, shall I say irregularities, are truly astounding at this day and age. David Horrigan spoke at length about these violations at a December 14, 2021 meeting. The fact that these meetings are virtual now, have robbed our residents from establishing an effective oversight over the proceedings. Certain developers, and their well-paid and well-connected representatives, have used their influence to gain outcomes that would not have been possible during live, in-person, public meetings. I call for this commission to review its prior decision with regards to the proposed Culver Street development and to recall its permit due to numerous violations. Thank you so much.

Chairman Sadil: All right. Mr. Hinckley, is there anyone else?

Mr. Hinckley: Uh, not at this time.

Chairman Sadil: Ok. We shall proceed with the meeting. Moving on to Item IV, Acceptance of Minutes.

IV. ACCEPTANCE OF MINUTES

A. ACCEPTANCE OF MINUTES (1-18-2022)

Chairman Sadil: Acceptance of the minutes from the Conservation Commission meeting of January 18, 2022. Do the commissioners have any additions or corrections at this time? Okay, seeing none. Uh...Vice Chairman Wagner, have you read the minutes and are you comfortable with voting this evening. Have you read the uh...have you watched the video and listened to the minutes?

Vice Chairman Wagner: I've read the minutes and I'm comfortable with them.

Chairman Sadil: Ok, thank you sir.

Vice Chairman Wagner: You're welcome.

Chairman Sadil: So, may I have a motion to accept the meeting minutes of the Newington Conservation Commission of January 18, 2022.

Commissioner Conway: So moved. This is Commissioner Conway.

Chairman Sadil: Moved by Commissioner Conway. May I have a second?

Commissioner Wagner: I second it. Commissioner Wagner.

Chairman Sadil: Second by Commissioner Wagner. Shall we call the role Ms. Gibbon?

Ms. Gibbon: Commissioner Ancona.

Commissioner Ancona: Um, hi. I'm going to abstain from this vote.

Chairman Sadil: Thank you. Obviously you weren't there, so we have one abstention.

Ms. Gibbon: Commissioner Bachand.

Commissioner Bachand: Yes.

Ms. Gibbon: Commissioner Casasanta.

Commissioner Casasanta: Yes.

Ms. Gibbon: Commissioner Conway.

Commissioner Conway: Yes

Ms. Gibbon: Chairman Sadil.

Chairman Sadil: Yes

Ms. Gibbon: Commissioner Wagner.

Commissioner Wagner: Yes.

Ms. Gibbon: Five yes; one abstention.

Chairman Sadil: Good. The minutes pass. Moving on to Section five, New Business.
Application #2022-02: Construction Activity At 77 & 93 Pane Road, Applicant: SBS Realty, LLC., Owner: McBride Properties, Inc., Contact: Brandon Handfield, P.E.

V. NEW BUSINESS

- A. Application #2022-02: Construction Activity At 77 & 93 Pane Road, Applicant: SBS Realty, LLC., Owner: McBride Properties, Inc., Contact: Brandon Handfield, P.E.

Chairman Sadil: Is the applicant present Mr. Hinckley?

Mr. Hinckley: I believe he is.

Speaker: Yes, we are.

Chairman Sadil: So who shall proceed with the presentation?

Brandon Handfield: I will proceed. For the record, my name is Brandon Handfield, professional engineer, licensed in the state of Connecticut, representing Yannick River Consultants, LLC. We are here tonight for the applicant, SBS Realty, LLC and [name inaudible] is also on the meeting. I will share my screen here shortly and give a detailed presentation of both existing and proposed conditions. Anytime you have any questions or concerns or comments, feel free to jump in. Is it ok if I share my screen Erik?

Mr. Hinckley: You should be good to go Brandon.

Mr. Handfield: All right. I just want to make sure I can unshare yours.

Mr. Hinckley: Yup.

Mr. Handfield: Ok. So again, thank you very much for having us. We're here tonight for a commercial development at 77 and 93 Pane Road. It's located on the south side of Pane Road so what you see in front of you is the title sheet that was submitted with some color and the 2019 aerial. All the plans you have tonight are simply what we submitted with some color added to it for presentation purposes. So Pane Road is north to the site, the site is to the south. Due east would be S.A. Frink Garden Center, due west, I believe, would be CT Auto and due south is the tail end of the Stew Leonard's property. About 900 feet to the east of our property, would be the intersection of Pane Road with the Berlin Turnpike. This is the existing condition survey that was performed by Kevin Franklin of Franklin Survey's and I overlaid that survey on top of the 2019 aerial just for some clarity and I'll just briefly describe the existing conditions we have today. So our site is outline in orange. So we have 77 and 93 Pane Road and these properties will be combined into one single parcel totaling 2.55 acres. Again, Pane Road would be to the north, or up, and Stew Leonard's would be to our south. The zone is the Planned Development District and currently, as you can see from this aerial, it is a vacant, undeveloped property however, there were land activities and land preparation activities that were performed on this site as part of a larger plan back in the early 1990s. There was a petition that was approved, I believe it was 92-12 and those activities involved some clearing, some filling and some reconstruction of storm water retention on our property to the south. The purpose of those was to make this parcel, as well as the two parcels to the east more developable. I can go through some historical mapping if you wish, but in essence, this area to the south was filled, cleared and filled and the storm water retention back here was expanded for the purposes of developing this property, as well as the S.A. Frink property to the east and the car wash property further to the east. In general...

Chairman Sadil: Mr. Handfield, if I may.

Mr. Handfield: Yes.

Chairman Sadil: So, regarding the purple lines. All the way on the lower left, that is wetlands, is that wetlands or what. I'm getting confused between the wetland and the buffer.

Mr. Handfield: So, that's a very good question. So, in magenta here, we have the wetland patterns, this is a wetland based on your town map, your 2017 town map. And this magenta line is also based on your town map, 2017. The hundred foot review area is also in magenta, so this is the 100 foot review area based on the town map which is the most conservative. We did have a soil scientist visit the site, James Slipperly, in general you can see his delineation underneath the town map in teal, it's a little less conservative, so we stuck with the town map. But in general, he did confirm the limits that are shown on your town map and we didn't see any need to change the map.

Chairman Sadil: One question I have on that left-hand side; what is feeding that wetland? Obviously if he ponding on the lower right is the pond...

Mr. Handfield: Right.

Chairman Sadil: ...that abuts the Stew Leonard property...

Mr. Handfield: Yeah.

Chairman Sadil: Does that pond flow into that area? That vertical wetland? Does it move on down further westward towards the L.A. Fitness, I know there's the big detention pond, by Sam's Club and L.A. Fitness. Is that water from that large pond flow into that vertical area or how does the water flow work in that area?

Mr. Handfield: I believe, based on, and I didn't get all the way in there, it's not easy to access, but I did get down into this area. This channel receives flow from Pane Road and developed portions to the north. So there's a very large conduit system that comes off of Pane Road, flows in an easement and discharges into this man-made swale. This activity is reflected on the petition 92-12, here and it's basically a hand laid, very large stone swale that was created. So the bottom is all stone and it's a two to one slope up to the original grade. This is separate from the pond. So the pond outlets generally down here to the southwest, so it is separate. This does not flow into the pond. So the storm water from Pane Road does not go into our retention pond; the areas to the north and the east do.

Chairman Sadil: Ok, but eventually those two link up and go westward off your...off your property...but those from the pond and from that vertical area, they join up and go west.

Mr. Handfield: Yeah, what I can do is, I can, these, this is from the drainage report that is submitted, it kind of gives the picture of what...um, let me go to [another slide]; this is before you developed it, you can see the pond existed and the stream kind of goes and this I think this answers your question, you can see the outlet goes to the southwest. This as petition 92-12 before the work was done. Again, you can see the stormwater pond and the discharge right here and again that flow going down. And as we go, this is post-approval, in 1995 they've already started to build the improvements, the pond was expanded. You can see the swale here that takes the storm water from Pane Road and you can see the storm water improvements that were part of the S.A. Frink and car wash development here. So those flow into the pond and the pond flows out, down through here. I believe at this time it was Caldor's, so well before Stew Leonard's. So this is basically the post conditions map that's filed in the town land records and it kind of shows the progress of what was done. So, in short, this was all filled in to create developable land.

Chairman Sadil: Thank you.

Mr. Handfield: You're welcome. Any other questions on exiting conditions before I jump to the proposed?

Chairman Sadil: I don't see any hands up at this time.

Mr. Handfield: Great. So what you have in front of you is Sheet No. 2 of your plan set. I won't spend too much time on this plan, it's kind of zoomed out and gives a high level view. Again, Pane Road is to the north or up on our page and we're proposing a single 11,170 square foot building. That building will include a safe splash swim school in the southern two-thirds of the building and the northern one third will be a commercial retail space that doesn't currently have a tenant, but it will be super able to be fitted out to a future tenant. Access to our site will be right in the center of the site to Pane Road, a twenty eight foot access driveway, serving a

single twenty four foot driveway that parallels our building and wraps around back to the west and basically allows us to access the rear doors of the commercial space, or the back of the house.

Chairman Sadil: Quick question here Mr. Handfield.

Mr. Handfield: Yes sir.

Chairman Sadil: Those pinwheel symbols, those stores, I see, one, two, three, four...what exactly are those?

Mr. Handfield: Here?

Chairman Sadil: No, higher up. Yeah, that. What is that? I didn't find it...I only glanced at the plan, but what does that represent?

Mr. Handfield: Those are going to be street and shade trees and I'll quickly cover that in the landscaping plan later on.

Chairman Sadil: Thank you.

Mr. Handfield: You're welcome. So, what I'll do now is I'll just flip over to sheet number three. What we did here is we have a higher scale resolution so it's a little easier to see. So we've rotated the page 90 degrees, so now north is to our left and Pane Road is to our left. Again, the building is shown in orange, 11,000 square feet and change. Twenty eight foot access driveway, 24 foot main driveway; 56 parking spaces are required for this square footage and we're providing 64 so we slightly exceed the minimum required. We do have four handicapped accessible spaces serving this building based on the quantity of space we're proposing. As we wrap around back you see our trash enclosure, at the end of our driveway you see a loading area that serves this rear sidewalk, that gets to the rear access doors and egress towards both areas. Then along the front, you see the sidewalk that serves the front doors of both the safe splash swim school and the commercial space. Just to recap, the regulated area is still shown in magenta, so this is the 100 foot upland review area based on town mapping and anything basically south and southwest of that line would be included in the regulated activities we're discussing tonight. So you can see there's a very small portion of the building, the southwest corner, and the sidewalks that are associated with loading area, the trash and recycling area, a small portion of the parking lot and after that we get into our storm water management and treatment system to the south and then landscaping and re-vegetation. You will notice a very large green area along easterly property line. At this time, that is being reserved for future development. We are not maximizing development on this parcel and we did try to leave a space and plan ahead so that can be built if and when this is a successful project. So, we do want to be upfront that this area here up toward the front may be a building in the future, there may be additional parking, depending on what that building is, but whatever happens, if there are any regulated activities that impact stormwater, we will be back in front of this commission. But we do want to explain that we are planning ahead. What I'll do now is go to the grading and drainage plan. So we still have that magenta line as the 100 foot upland review area, so, in general, all of our site utilities for the building are sewer in green, our power in red, our water in blue and our gas in yellow; they are all outside of the upland review area. Really the only utility that encroaches into that upland review area is related to drainage. So what we have is an internal area of drainage that collects our parking lot and it discharges to a storm water, a sediment forebay at the south end of our parking lot. That sediment forebay feeds into a filter bed that provides the treatment for our water quality volume and our water quality flow. So all water from the parking lots and the roof

enter into this sediment forebay and filter bed so all impervious surfaces are treated. In addition to that, we do have a mechanism around the west side of our property, so you will see a swale here, it's a gently graded swale that will collect any runoff from the sidewalk areas that may be salted or anything that comes off the building and that directs it again to the filter bed so we don't need a sediment forebay for that but we did want to put it into the filter bed area so we get treatment on that and some level of attenuation even though we don't really need it. That filter bed has a three in free board so there will be a slight stack up of water before it enters into our outlet structure which is simply a catch basin. That catch basin discharges into the existing stormwater system that's on our site. So, this catch basin here, this catch basin in the middle, and this catch basin here, which is also a sediment structure, were all put in in the 1990s as part of that approved development. So this discharge and flared end into the pond, all exist, so what we are doing is providing a new outlet control structure and treatment structure and connecting into that. I did inspect the outlet that exists at the flared end, it's in good shape, the rip-rap is still there, I didn't see any notable erosion or sedimentation and from my inspection the general contours or topography match what was originally installed in the early 1990s. So, in general, I think the site is performing and it will continue to perform with this development which is much less than what was originally approved and planned for.

Chairman Sadil: Mr. Handfield.

Mr. Handfield: Yes sir.

Chairman Sadil: I have some questions. Describe to the commission the sediment forebay, what it is and this filter bed in general terms what that is; what type of treatment; how that water will be treated before it's discharged. Can you just describe to the commission, and we're not engineers but what is that doing, how is it constructed, that sort of thing.

Mr. Handfield: The sediment forebay is simply a depression that's excavated into an existing grade. It's anywhere from 18 inches to 24 inches deep depending on where you are. We will be discharging likely about 12 inches above the bottom. Water will attenuate in there and discharge into that sediment forebay; it will slow down and sediments will fall out. We are proposing a filter berm so water will flow through a crush stone or crushed stone berm and as it washes through there will be no velocity, so it will fill up the filter bed in a laminar fashion so very slowly, and that water will basically collect in the filter bed and the filter bed itself is constructed of 12 inches minimum of an engineered mix material, so the material will consist of 50% topsoil, 30% sand, and 20% mulch and what that product gives you is filtration capabilities and well as treatment capabilities so we are trying to promote water to go back into the ground. I will admit that the existing soils in this area are not very good. As I said before, this entire rear of the site was filled for purposes of development. The soil that I witnessed is not of the highest drainage capability I've ever seen, but what we're trying to do is promote as much infiltration as we can before we get runoff. So we are improving a condition that was given to us. Does that answer your question?

Chairman Sadil: Yes. My next question is how much can this handle when we have a...at what level storm? A five-year storm, 20 year storm, 100 year storm, what happens when it really pours, we get several days of heavy rain. What are the limitations can it handle, will it overflow if it's inundated from a very, very heavy rain, like a hurricane or whatever, a nor'easter that happens every so often. What are the safeguards for them?

Mr. Handfield: It's a good question. So it's kind of an iterative process. So, in a very large storm, our collection system points can get overwhelmed quickly, so those are our first

source and if they do get overwhelmed, even if there's clogging, flow will continue to go down the parking lot and if it does continue to be overwhelmed, it will still get into our sediment forebay as this is the graded low point within our parking lot. So, regardless of the performance of our catch basin system, water will always flow in a southerly direction and be caught by our sediment forebay and filter bed first. Assuming we're performing well and it's just a very big storm, the sediment forebay and filter bed are mainly designed for that first inch of rainfall, it's slightly oversized so it's a litter over an inch, but the intent of the sediment forebay and filter bed really is treatment. We don't need attenuation on this property, it was installed in the early 1990s as part of petition 92-12. So that, and going back to this approved plan, this area here is the enlarged stormwater retention pond that was constructed as part of that approved plan. The purpose of this enlargement was to accept the development of our site 77 and 93, the S.A. Frink site and the car wash development. So, that volume exists already and the volume that was provided was for a very high, intense development, so likely 90% impervious, we're nowhere near that so we don't need attenuation, we need treatment. If, and when, the storm water exceeds the capacity of our filter bed and sediment forebay, there's three outlets that it can go to before it's an overflow condition. So the first, we're providing a stone stabilized overflow area from the filter bed, so here's our outlet structure and here's a stabilized rip-rap overflow structure that gets us to this existing catch basin. So, if and when our filter bed exceed capacity, and the catch basin outlet structure exceeds capacity, there's still an overflow to this catch basin here, and there's a catch basin here that can also take overflow. From there, water will overflow, if it doesn't get into these two structures, it will basically follow the path it takes now. So any water that doesn't get into this catch basin, it flows along the top of this pipe and directly into the storm water retention area.

Commissioner Wagner: Commissioner Wagner here, can I ask you a question? Now this filter bed here is an open area or is it enclosed?

Mr. Handfield: It's an open area. So, in short, or in summary, it's a very shallow rain garden with engineered soil to promote infiltration.

Commissioner Wagner: Now would it be ok like if the soil is not too good for absorption, would like cat tails be a good natural filter also to help it.

Mr. Handfield: So what we're proposing to plant in there is basically a conservation seed mix made or intended for moist sites or detention basin sites. So what that seed mix has mostly are all native shrubs and grasses in it. A lot of the grasses promote a very deep root growth to promote infiltration. So I've used it successfully in a lot of site and I prefer to use that style of seed mix which has a lot of diversity. I try to stay away from a single or double plant type so if you get failure of one plant type, you're kind of left with an unvegetated area, so that the seed mix kind of whatever is most successful of the 13 species, it will propagate and it will still be native.

Commissioner Wagner: Ok. Thank you.

Chairman Sadil: Mr. Handfield, if I may.

Mr. Handfield: Yes sir.

Chairman Sadil: Relative to the sediment forebay, what type of maintenance is required, it is yearly, every five years. I mean, if you're collecting sediment, what type of maintenance on this system would be required?

Mr. Handfield: So we have a number of iterations for operations and maintenance. It's actually shown on the plan, on the left center of that plan. Yeah, we require that the sediment

forebay be inspected in the spring, basically after winter maintenance time when there's sediment put down on the parking areas and then sediment has to be removed when it reaches a height of 12 inches and that generally is the bottom or flow line out of our system. So once sediment is witnessed at the flared end, it has to be removed and disposed of properly. So we did include that on the plan set.

Chairman Sadil: Good. Thank you.

Mr. Handfield: You're welcome. Any other questions on drainage? All right. This is our landscaping and lighting plan. What we're showing here are a number of things. So again, we've already discussed this here, but we are adding trees. And just to cover one thing about this site, it is extremely dense and mainly invasive growth. So we did have to go in there and brush hog lanes just to survey, it was so tight. A lot of autumn olive, a lot of Japanese barberry all kinds of things that don't feel really good on anything. We did clear some lanes, but in general, there is no mature, quality vegetation on this property. It's all regrowth from the early 1990s and it hasn't really been maintained. So all that vegetation will be removed and we will have a revegetation process. So along the street we have some street and shade trees similar to red maples to provide some seasonal color, as you work your way down the property, there'll be foundation plantings and none of this is in the regulated area. As we get to the rear we're adding some trees as well. We're not providing any significant landscaping where there may be development in the future, but we are going to plant grass that will be maintained. As we get to the southern side of the site, we're proposing to add a staggered row of conifers or screening trees, really to provide a visual buffer as well as a physical buffer or barrier to keep people, to basically prevent access to the south. The reason I say that, this is a conservation easement held by the town that was granted as part of the original development. So we're proposing, where there's not an easement, to plant one of three species of evergreens, and I have to go the chart to understand what those are, but they are right here. So we have limber pines, spruces and firs, so again, the purpose of that is to have multiple species that can survive and rather than have one species and if you get a bug or something like that, they all die. So again, we are proposing to provide the buffer, this is a conservation area here; that's the line there. So we are providing that visual and physical barrier and we continue that between the filter bed and the existing drainage that exists. So again, that same physical barrier as well as a visual barrier. So the only reason really to go back here is to maintain and we did leave enough space to do that following our storm water management system.

Chairman Sadil: Mr. Handfield.

Mr. Handfield: Yes sir.

Chairman Sadil: I do have to ask you about that garbage retaining area there. It is in the upland review area, it is pretty close. Is there a reason for it being there, just to protect, you know there's leakage and whatnot from food and all that, you know, cups and all that other stuff. How is that, is there special care taken, I don't see a more optimum, a better place to put it on the plan. Obviously you want to put it somewhere out of the way, but is there a precaution that that stays contained?

Mr. Handfield: Yes. Good question. So there's a number of safeguards in place. One, it is a concrete pad that's surrounded by six foot high solid vinyl fence, so anything that's in there that doesn't make it into the trash will be fully enclosed so it won't blow around by wind. The entire pad is graded towards our parking lot, so any runoff flow onto our parking lot and is collected by our catch basin system, so this entire pad flows in an easterly direction and will be

collected by this catch basin here and that catch basin flows into the sediment forebay. So any floatables, debris, sediments, or other materials that are in this trash collection area that shouldn't be will be collected by this catch basin and end up in the sediment forebay before entering our filter bed, so anything in there will end up in here. There's also a secondary measure, I briefly went through it and I'll just click back a page, is this swale. So anything that happens to not flow in this direction, it still can flow directly to the wetlands. I put this swale to cut off any potential for flow to go directly from our developed site into the conservation area or the wetlands. Even, you know, a drop of rain that falls here, anywhere on the grass that's maintained, it all flows into our filter bed first and can be collected by our treatment system.

Chairman Sadil: Ok. I do have just one final question.

Mr. Handfield: Yup.

Chairman Sadil: Relative to the swimming area itself, that's all self-contained, there's nothing to do that is something discharged that goes to MDC. There's nothing, you know, I haven't, you know, that plumbing is totally separate and goes towards MDC.

Mr. Handfield: Yeah, so it's a closed system, there's no direct discharge of the pool water to the outside and I could get the details of the mechanicals, but I do know that we are providing a water hookup for the pool, and there is a substantial filtration system here that I believe is mostly related to HVAC in terms of turning over the air inside the building. But the water itself, if it does have to be drained, it will be connected to the sewer.

Chairman Sadil: Thank you Mr. Handfield. I welcome comments and questions for the rest of the commission.

Commissioner Bachand: Um, John Bachand here Mr. Chairman.

Chairman Sadil: Go ahead.

Commissioner Bachand: Um, for the representative, what was the, you have my said it, but um, I heard you say it was previously approved. What was the previous use going to be? Or the previous approval.

Mr. Handfield: So the previous approval was not defined as far as I could see. I'm just going to go, so this was the approved plan, so in general there was no specific development of this property itself, it was simply part...

Commissioner Bachand: of the subdivision.

Mr. Handfield: Yes. It was a development pad and part of a subdivision and they had to do improvements as part of that. I do have a plan, I don't know it was ever approved or even made it to the commission for an ice rink. That ice rink went all the way out over here into the conservation easement. It was highly impervious. Again, I don't know if that ever made it to the commission but that's the only sign of development I ever saw.

Mr. Hinckley: I don't believe it ever came before the commission.

Mr. Handfield: Ok.

Commissioner Bachand: And, also, you said these are two separate lots. Is that correct?

Mr. Handfield: Correct. These are two separate lots that we will be combining into one.

Commissioner Bachand: And the conservation easement is off of the subject property. Is that correct?

Mr. Handfield: That is correct. The conservation easement is here.

Commissioner Bachand: That was all part of that subdivision at the time. Originally it was one property or...

Mr. Handfield: Actually this property went all the way out here originally and at some point, and I can zoom in here so you can see it, here's your conservation easement, so this property used to have a little dog leg on it and go all the way out to here. At some, I don't have the title handy, but this area was part of a conservation easement and the town controlled it. So this line here is the separation between our property and the conservation easement.

Commissioner Bachand: So is it town property now or is it private property? The conservation easement?

Mr. Handfield: It looks like it's owned by Newington Berlin Retail LLC and it's a conservation easement in favor of the town.

Commissioner Bachand: All right, that's it. Thank you.

Chairman Sadil: Any other commissioners are this time? I do not see anyone's hand up. John Casasanta, please go ahead. Commissioner Casasanta.

Commissioner Casasanta: No, I was going to say I just had the one question that you covered Mr. Chairman about the refuse and it being so close to the wetland, the western wetland. But the applicant's explanation of how the runoff works and the mitigation that's being taken to prevent any refuse from ending up in that wetland satisfied me. So, it was a very good presentation and I have no further questions.

Chairman Sadil: Thank you Commissioner Casasanta. Let's go to Commissioner Ancona. Do you have any questions at this time?

Commissioner Ancona: Nope, I'm all set. Thank you.

Chairman Sadil: Commissioner Conway?

Commissioner Conway: Uh, no questions. Thank you.

Chairman Sadil: Vice Chairman Wagner, I assume you're fin at this time to proceed. Commissioner Wagner?

Commissioner Wagner: I have no further questions. Sorry, I had to take a break. I'm listening.

Chairman Sadil: Ok. So, I guess this concludes the presentation. I think the next order of business for the commission is to decide if a public hearing is necessary on this Mr. Hinckley. I think that's the next order of business.

Mr. Hinckley: Yes it is.

Chairman Sadil: So, I'm not in favor of a public hearing, this is a commercial area and I am comfortable with the details here. Commissioner Wagner, what say you?

Commissioner Wagner: I'm not in favor of a public hearing. I think it's a commercial area; it's been planned since the 90's so I'm good with it.

Chairman Sadil: Commissioner Bachand?

Commissioner Bachand: I agree with the two of you.

Chairman Sadil: Commissioner Ancona?

Commissioner Ancona: I agree.

Chairman Sadil: Commissioner Casasanta?

Commissioner Casasanta: I also agree.

Chairman Sadil: Thank you. Commissioner Conway?

Commissioner Conway: As do I. I agree.

Chairman Sadil: Ok, thank you. So, Mr. Secretary, may I have a motion on Application 2022-02, for option 2.

Secretary Casasanta: Yes, for application 2022-02.

MOTION: This activity will have no significant impact to the regulated area and the application will not require a public hearing.

Chairman Sadil: So moved, may I have a second?

Commissioner Wagner: I second it. Commissioner Wagner.

Chairman Sadil: Second by Commissioner Wagner. Shall we call the role Ms. Gibbon?

Ms. Gibbon: Commissioner Ancona.

Commissioner Ancona: Yes.

Ms. Gibbon: Commissioner Bachand.

Commissioner Bachand: Yes.

Ms. Gibbon: Commissioner Casasanta.

Commissioner Casasanta: Yes.

Ms. Gibbon: Commissioner Conway.

Commissioner Conway: Yes

Ms. Gibbon: Chairman Sadil.

Chairman Sadil: Yes

Ms. Gibbon: Commissioner Wagner.

Commissioner Wagner: Yes.

Ms. Gibbon: Six yeses.

Chairman Sadil: Ok, unanimously. Thank you. So this concludes this, we'll move this to Old Business Mr. Handfield for next month and we'll act on your application.

Mr. Handfield: I appreciate it, thank you very much for your time.

Chairman Sadil: Ok. Moving on to Application #2022-01: Restoration Of The Upland Review Area At 249 Day Street, Applicant And Owner: 249 Day Street LLC., Contact: Peter Mirabelli.

VI. OLD BUSINESS

- A. Application #2022-01: Restoration Of The Upland Review Area At 249 Day Street, Applicant And Owner: 249 Day Street LLC., Contact: Peter Mirabelli.

Chairman Sadil: Mr. Hinckley, is the applicant available?

Mr. Ludgin: We are here this evening. Bob Ludgin representing Mr. Mirabelli, he's here on my right.

Chairman Sadil: Mr. Hinckley?

Mr. Hinckley: Yes, the applicant is here, sorry.

Chairman Sadil: Ok. Is there any words that the...I'll default to the applicant, is there anything, I noticed their revised plans. Are there any changes to the plans from last month's meeting? Would you like to give a little synopsis or any other comment or update on your project?

Mr. Hinckley: I can just tell you Mr. Chairman, all the updates were just minor in nature. They just revised the comments the comments we had from my comments to the applicant about removal of pavement and planting seed mixes and stuff like that. If you'd like to see the plans I can bring them up, but they were minor in nature I believe.

Chairman Sadil: OK. Let's bring that up real quick Mr. Hinckley, we have a few minutes. Let's just do that.

Mr. Hinckley: All right, just give me a minute to get those plans.

Chairman Sadil: Ok.

Mr. Hinckley: So here's the plan. We had some comments here about wetland friendly see mix and conservation mix; down here we had a notation because there was an old driveway there, they're going to remove the pavement that was there and reseed that and there were some other planning and zoning comments about curbing and whatnot that they had for that approval since this was all the same set.

Chairman Sadil: Ok. I have no further questions at this time. I will turn it over to the rest of the commission, you have any other last thoughts, concerns?

Commissioner Casasanta: No.

Chairman Sadil: Anyone else? Please raise your hand at this time. I do not see anyone's hand at the moment. So Mr. Hinckley, is the application complete?

Mr. Hinckley: Yes it is Mr. Chairman.

Chairman Sadil: Thank you. Mr. Secretary may I have a motion to approve permit Application 2022-01, 249 Day Street.

Secretary Casasanta: This is for Application #2022-01, 249 Day Street, for Restoration of the URA (Upland Review Area), Owner/Applicant: 249 Day Street LLC., Contact: Peter Mirabelli.

MOTION TO APPROVE

Move to approve the application with the 10 stand conditions and the following two special conditions.

- A. All proposed buffer plantings shall be installed by September 15, 2022. The applicant shall notify the wetland agent to verify the installation.**
- B. Subsequent to the tree plants, an inspection of the planted areas should be conducted by an arborist to document the placement and vigor of the tree plantings. Additional yearly inspections of the planting areas should be conducted during the growing season for at least three (3) subsequent years to ascertain survival rates. Reports documenting the findings of the inspections (including the presence of any invasive species) shall be provided to the local Inland Wetland Agent no later than December 31st of each year. If mortality rates of the plantings exceed 15% (fifteen) the plantings shall be replaced.**

Chairman Sadil: So moved. At this time does the applicant understand these conditions A & B?

Mr. Ludgin: The answer is yes.

Chairman Sadil: Ok, thank you. May I have a second?

Commissioner Bachand: I'll second it. John Bachand.

Chairman Sadil: Second by Commissioner Bachand. Final discussion. Ms. Gibbon please call the role.

Ms. Gibbon: Commissioner Ancona.

Commissioner Ancona: Yes.

Ms. Gibbon: Commissioner Bachand.

Commissioner Bachand: Yes.

Ms. Gibbon: Commissioner Casasanta.

Commissioner Casasanta: Yes.

Ms. Gibbon: Commissioner Conway.

Commissioner Conway: Yes

Ms. Gibbon: Chairman Sadil.

Chairman Sadil: Yes

Ms. Gibbon: Commissioner Wagner.

Commissioner Wagner: Yes.

Ms. Gibbon: Six yes.

Chairman Sadil: Motion passes unanimously. Good luck to the applicant.

Mr. Ludgin: Thank you very much.

Chairman Sadil: OK, moving on to item VII, Public Participation on Non-Agenda Items, each speaker limited to 2 minutes.

VII. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS
(each speaker limited to 2 minutes)

Chairman Sadil: Mr. Hinckley is there anyone on the line waiting?

Mr. Hinckley: No one has their hand raised at the moment Mr. Chairman.

Chairman Sadil: Ok, we shall proceed. Item VIII, Communications and Reports. Item A. Agent Communications.

VIII. COMMUNICATIONS AND REPORTS

A. Agent Communications

Chairman Sadil: Mr. Hinckley do you have anything to report this month?

Mr. Hinckley: Yes, I do. I was notified by the Parks & Rec department that they've contracted with Connecticut Pond Services to do their annual spraying of Mill Pond and Churchill Pond. They've sent me all of their approvals, the agent has sent me all of their approvals for DEEP, etc. So that will be taking place at some point in the spring or summer.

Commissioner Bachand: What exactly are we spraying for, I'm sorry.

Mr. Hinckley: It's herbicides I believe.

Chairman Sadil: That was Commissioner Bachand.

Commissioner Bachand; Yeah, Commissioner Bachand, sorry. Herbicide or pesticide?

Mr. Hinckley: I believe it's herbicide, let me look, I have to look through all the information in here. It's not insecticide. No, it is pesticide, sorry.

Chairman Sadil: Commissioner Conway you had your hand up.

Commissioner Conway: Yes, thank your Chairman, and I don't know if this is...I know we're under Agent Communications at this point, this might be the wrong time to bring it up, I wasn't sure what time was the right time, but I do have some concerns. I'm wanting to address the public participation at the beginning of the meeting and you know I just have some concerns about it. Do I need to make a motion to investigate the December meeting just so we can have discussion about it, or, uh, I don't know if there are some grounds for legal action that they were talking about of it that's even what they were discussing that they would take it; I just, like I said, I'm concerned that uh...

Mr. Hinckley: Understood. I do know that the appeal period passed without anyone filing an appeal which is the statutory right of everyone pursuant to the statute. I know that passed and I think Renata has something she would like to say as well.

Ms. Bertotti: So, Mr. Chair, I don't know if you need to make a motion to enter discussion commenting on public comments on this. The statutes are fairly clear with regards to rescinding decisions. You may, if you wish, ask for an attorney's opinion on that, but well established rules are that the proper way to appeal the decision is to appeal the decision through the court process. I have never heard of a commission rescinding their decision. Sending anything to council for investigation is the right of the public and the council to do and I think that that is all that there really is to it. You as a commission may discuss your rules and procedures, that's another option you can have. Or you can seek additional training, like the type of training we had through the Land Use Academy or off that; we can certainly look into providing that sort of thing. So that's, I believe, all that I would offer. But whether or not you decide to make certain motions or do something on the floor, that's up to you. All I can tell you

is that all legal ramifications should be definitely not made tonight and if anything you may seek legal advice.

Chairman Sadil: Well, if I may. You mentioned the workshop that was two weeks or so ago and I guess where I was in error, and I think this is for the benefit of the rest of the commissioners, is that when the public hearing is closed, not only to the public, it's also closed to the commissioners as well. Ok. So one of the takeaways I got from the training was that, you know, I was, we had the public hearing, but that also means that we cannot ask the...we have to deliberate amongst ourselves, like in a trial, in a jury right, we cannot ask, even as commissioners, we can't ask for anymore information, we're locked out at that point. So I will say in hindsight, you know I have concerns, obviously a lot of public opposition to the project, but I had some questions to ask and based on the regulations that I was put forth, there was no reason, in my opinion, that they would be denied an application based on our regulations. You know, why would they be denied an application. I did work the applicant over to see any lingering doubts, but in the future I'm not going to close the public hearing. I was miss...I was...that's my bad as far as closing the public hearing, not realizing that commission cannot ask any questions after that. We talked about this other agency, this act or something from the state where we get their opinion, there was talk of that. Apparently that's not allowed. I mean the public hearing have to be open for us to seek these types of guidance from other state agencies perhaps, or if you have other, have to have a chance to read the minutes. You know, we're going against your 30-year professionals here, we're just members of the public trying to figure this out, ok. So, I guess that is one of the key takeaways I got from the workshop and I want to share that with the rest of the commission. That's not gonna...that's not gonna happen again. You know, I have to think about this obviously, I do want to have legal counsel and obviously I have to give this some thought. I'm not going to answer your question Commissioner Conway tonight, but that's my side of things. I just had some lingering questions that I wanted to have answered. Renata you wanted to speak. I believe you're on mute. It happens to me all the time.

Ms. Bertotti: I know, I know, this is like...the most spoken sentence of the COVID era is "you're muted." Not to belabor this point too, too much, but you, like what was discussed in the training, you should ask all the questions while the hearing is open. But you should also, as a commission, be mindful of not keeping public hearings open if you don't have any questions and that was discussed as well. So, it's one thing to have questions or to think that you will have questions, and then keep hearings open because you suspect that you will have some questions coming up and that's an absolutely legitimate reason...

Chairman Sadil: There is one comment that we will add, there was one, and most of the comments were not relevant to the wetland, right. When we go to these we have to know what on the plan affects the wetland. You can't just say I don't like this, right, you have to say what in the plan effects that would degrade the quality of the wetland conservation easement, what have you. That is what those hearings are for. Not say I don't like this or that, we get a lot of that unfortunately; but we need finding of fact that something in the plan will degrade the quality of the wetlands and that's the bottom line here. Sometimes you may hear something from the public, there was maybe one or two comments, there was one about the vernal pool, that drainage area, that Ms. Tracy Budrejko brought up and maybe I wanted to investigate that a little further, right, but I'll be more careful in the future, I'll be sure of that, but we're going up against professionals here, we don't have, we don't know, I don't know everything. I don't know if the commissioners know everything, but that's my rebuttal to your remark Renata. I want to go to Commissioner Casasanta and then to Commissioner Wagner.

Commissioner Casasanta: Thank you Mr. Chairman. All I really have to say is now being the new Secretary of the commission and having been on boards before, should have realized at the time that once a public hearing is closed, it's closed. We cannot take any more testimony from the applicant or public at that point in time and all I have to say, more in a procedural vein is this was an isolated incident and I don't foresee it happening again. That's all I have to add right now. Thank you.

Chairman Sadil: Thank you Commissioner Casasanta. Commissioner Wagner.

Commissioner Wagner: I agree with Commissioner Casasanta, and you Chairman Sadil, that it was unfortunate that happened, we all learned from it. But also, most of the complaints were coming in because it's highly emotional development and understand where they're coming from; it's right across the street from them. But there's really no, like there's nothing that's gonna affect the wetlands. So there's a lot of emotion about where they're building it, so that's why I knew from the beginning I was gonna vote the way I was gonna vote. Nothing changed my mind, I have my vote in because I didn't think there's gonna be any effect...ill effects to the wetlands. Maybe we should have a little class on Roberts Rules of Order, like a small one to remind us of some of this stuff, because some of us are new to it and if we don't have a yearly training on something you forget things because you don't use it all the time.

Chairman Sadil: Thank you Commissioner Wagner. Commissioner Casasanta back to you.

Commissioner Casasanta: Thank you Mr. Chairman. Just one more thought, I don't know what your thought is, or the thought of the commission as a whole, could it be worth having it reviewed by the town attorney?

Chairman Sadil: Yes.

Commissioner Casasanta: Ok. That was just my suggestion. Thanks.

Chairman Sadil: I was going to get to that and then Renata mentioned it. I will...can we go to Commissioner Ancona, our resident...can you comment on this.

Commissioner Ancona: I just wanted to say that I sure hope that the comments made by the people building it wouldn't sway our view of it anyways, I noticed that was mentioned. Yeah, I think reviewing the rules and it's a good learning experience for us; it would be good to review the rules more.

Chairman Sadil: Anyone else at this time? There's a member of the public, I don't think we can invite him in at this time we passed on public participation.

Mr. Hinckley: You did pass that by, yes.

Chairman Sadil: So, I recommend sending the commissioner and email or any parting thoughts. But I think that's basically it, the comments cover it by the commissioners tonight, myself and the commissioners I think. But I do Renata, if that's ok with you, just a consultation; if I need to get involved, let me know.

Mr. Bertotti: Sure, thank you.

Chairman Sadil: If you can satisfy this and get closure on this.

Mr. Hinckley: All right. Ready to move on to the next item or you guys...

Chairman Sadil: Yes, I'll got to Item B. Town Council Liaison Communications. I see the two councilors on line.

B. Town Council Liaisons Communications

Chairman Sadil: I see the two councilors on line. Who wants to go first?

Councilor Budrejko: Can I just...am I allowed to just ask a question. I'm not quite sure what the resolution was of the previous discussion. Is something going to be sent to attorney or is for the decision for the process, I mean, what, I'm not quite sure. Because I know Councilor Radda and I were, you know, there was a request for action or bringing it to the town council which probably, which would have been a legal review, but if you are going to be doing a legal review...I don't know what you're....are you reviewing the decision or the process or what.

Mr. Bertotti: So my understanding of what my charge was going to be was to send an email to the town attorney essentially asking whether or not the commission had any authority to consider rescinding their decision or delay signing off of their wetlands permit based on reviewing of how this decision was made. So that was one aspect of the town attorney's review. And then the second, of what my at least understanding was, a request from the town attorney that he presents to the commission one night, certain rules about certain Roberts Rules of Order in relationship of how to run a meeting, including discussing the charge difference between consideration under your conservation commission hat versus considerations you are allowed to do under your inland wetlands commissions hat. You know, purely advisory versus regulatory; which one kicks in at which stage of the proceeding and, you know, what triggers what kind of element in your decision making and public hearing process. Many complaints that were heard or comments that were made, they're not perhaps related to inland wetlands aspects of the application which is what our Chairman has mentioned. So that is what I understood I would contact the town attorney about. So, if I'm mistaken on that, please correct me.

Councilor Budrejko: Ok. So basically you're just asked for...the charge is just to ask whether this commission has authority to rescind or delay the decision and for them to review it themselves, but the attorney's not going to be asked for an opinion on what transpired or the decision.

Ms. Bertotti: No. I think everybody has acknowledged that post public hearings, once public hearing closes, there should not have been conversation. I think pretty much everybody in the room has recognized that. So procedurally there were certain regretful steps that occurred that night. I think the Chairman has acknowledged so and so did some other members, due to certain circumstances that occurred that night as well. The public hearing may have been closed too soon, as the commission chairman has stated, there may be certain questions that remained outstanding that were questions that they still felt were appropriate to ask, so they proceeded by asking. So I don't think anybody is really asking whether or not that process was correct; I think the question by the public is whether or not the commission can decide not to sign the wetlands permit because of that decision and that is the question on the table. The members of the public, two or three that spoke, would, the way I understood their comments, like that the commission rescinds their decision. It is my understanding of the state statutes that the commission cannot do that. I can ask the town attorney if I am correct but I'm pretty sure that really cannot happen and I think the actual ask of the commission is to not sign the wetlands permit so that the project cannot proceed.

Councilor Budrejko: So there's nothing in the process now, I mean, it's not like the signing is going to happen tomorrow, whatever, there's nothing that's gonna have to be put on hold until the attorney's opinion is received. Correct?

Ms. Bertotti: I don't believe so no.

Councilor Budrejko: Ok, so the public then, if they're... I guess, or maybe the attorney, maybe this has to be included in the attorney's opinion if the public, if this commission... I guess I see a couple of scenarios. If this commission, first of all doesn't have the authority rescind or review the decision, what are... the opinion from the attorney, would it include what the public's, if they wanted to take it further what the next step would be and/or if the opinion is that this commission has the ability to rescind or delay signing, does that mean they can reopen the discussion or does that mean that the entire decision is reversed.

Ms. Bertotti: I believe that the public, the people who have testified tonight, there were three particular testimony tonight that has asked for exactly that. That the commission rescinds their opinion, rescinds their decision, and delay or denies signing of the wetlands permit. I do not believe that that can happen; I do not believe that that's allowed under statutes; I do not believe that either the wetlands commission or the planning commission or the zoning commission have the authority to do things of that nature. The proper way, the way I always understood land use law, is that once the land use decision is made by the commission, any party that would like to appeal that has a certain amount of time to appeal that to the court, not to that commission, nor the town council. So, you know, if the public is not satisfied with my interpretation of that, if the commission is not satisfied with my interpretation of these legalities, and I'm not a lawyer, so I will take that, you know, we can ask the town attorney to confirm or verify my interpretation of this. So that is what I offer in response to this. You can ask council the same question, but it will essentially result in them turning to town attorney...

Councilor Budrejko: To the town attorney, right.

Ms. Bertotti: asking him the same questions.

Councilor Budrejko: So it's better to at this point, I mean, at least, I mean the council liaisons, Councilor Radda and myself, we would have done that, I mean, it would have been delayed if we brought it to a council meeting. I mean, you're going to act on this or give it to the town attorney like tomorrow or whatever.

Mr. Bertotti: Yes, maybe not tomorrow...

Councilor Budrejko: The actions that the council would have taken, you know, for Kim and I, are basically the same that you're going to be taking tomorrow or whatever.

Ms. Bertotti: I will do that this week, I don't believe I'm gonna be able to do it tomorrow, but I will definitely do that before the end of this week. And if you wish, I can copy you and Councilor Radda on this as well so you can have that for your communication and council for next week.

Councilor Budrejko: Ok. I think Councilor Radda, you probably have...

Chairman Sadil: Councilor Radda go ahead.

Councilor Radda: Yes, Councilor Budrejko had you said everything you wanted to say first.

Councilor Budrejko: Well, not on this subject, there was something else I had.

Councilor Radda: Ok, I will talk on this because I had the same concerns in mind, especially where I'm reading through my notes, especially where Commissioner Sadil said that this was going to be to the council so at some point whether it's through public participation or emails to council members, I'm sure we will hear more about this. My questions were very similar to Councilor Budrejko's and I appreciate Renata, you taking that to the town attorney and yes, please get back to the two of us that way we have something we can present at the next council meeting if necessary. My only other question, and I'm not sure if it was answered yet, is with this, and I'm going to use Mr. Zelek's phrase, this is not my own, what he calls the handling of the meeting, of the public hearing, and the closure of the public hearing, and allowing for the applicant to speak. If that somehow impacts the decision, I'm not saying swaying of the decision of any of the commissioners, but because that occurred and it was not, it was outside or in opposition to the regulations, the state regs., would that automatically negate whatever that vote was. I have no idea, I'm not an attorney either, I'm just asking. Maybe that's something that you could also ask the town attorney.

Ms. Bertotti: I can ask the town attorney. Again, the statutes are clear. The way to appeal, even that kind of thing, is though a proper appeal. Not through a reversal of the decision.

Mr. Hinckley: That's correct and there has been, about four years ago, five years ago, there was an appeal of a wetland's decision and that person went through the court system.

Chairman Sadil: Is that all Councilor Radda.

Councilor Radda: Yes, thank you very much.

Chairman Sadil: All right. Commissioner Wagner's waiting.

Commissioner Wagner: Commissioner Wagner here. So it should be noted also that the public ran out of time to appeal this project. There's no adverse conditions. We made a vote. The public could have appealed it in the time that was given to them, which they didn't. So that should also have a big effect on how this is handled also. Because if they had an issue on how we voted, yes, the procedure was a little off, we opened it up and discussed it again, but I think the commissioner said it didn't sway their vote and if they thought that we...there was an issue, they should have appealed in in the proper time which they didn't.

Chairman Sadil: Thank you Commissioner Wagner. Commissioner Ancona.

Commissioner Ancona: Yeah, I agree with Commissioner Wagner. And the public is saying that we were a four three vote before we allowed the builder to talk to us and I think if we concede that as a reality, that is very, that's a very bad thing and we have no business even being here. So I think it's very implausible that that's even a reality.

Chairman Sadil: Ok, anyone else? Renata I want to thank you for taking that action item.

Ms. Bertotti: Sure.

Commissioner Bachand: Mr. Chairman.

Chairman Sadil: Commissioner Bachand.

Commissioner Bachand: Yeah, I had my hand up. So, I just want to be clear here, I'm not asking for a, you know, it's an interesting topic, but, you know, I'm not asking to know what my options are on reversing this decision. So, I just want to, I don't know if we need a poll or is

someone asking that they want to know if they can reverse their decision? Because I'm not. I'm not even sure why we would ask for the legal decision or even legal opinion, not a decision.

Chairman Sadil: Well, I want to address the matter Commissioner Bachand once and for all and get closure for the sake of the public...

Commissioner Bachand: For knowing for the future your saying.

Chairman Sadil: Yes, so just, exactly. Let's get the record straight, and we were being asked to go on the record to respond and we will in kind.

Commissioner Bachand; Ok. I would just bring up one case, if you remember Toll Brothers. There was a reversal of a decision but it was immediately after the vote was taken and members of the commission stated that they were unclear on what they were voting on. So, that was different than this, but there was some precedence there. But different situation though. That's it.

Chairman Sadil: Commissioner Casasanta. I think you had your hand up or is that...

Commissioner Casasanta: Yeah, no, I think the main issue here is that we took testimony after the public hearing was closed in direct violation of the commission's rules. We shouldn't have done that, and members of the public who are opposed to this development have cried foul over that. All I'm saying is have the town attorney take a look at it and let's make sure we get this right. I think it's the prudent thing to do. We shouldn't rush and pass judgment ourselves. Let the legal expert take a look at this and determine what's the best course of action. Thank you Mr. Chairman.

Chairman Sadil: Thank you Commissioner Casasanta. Councilor Budrejko.

Councilor Budrejko: Yes, well no, I guess I agree with Commissioner Casasanta. I think because of the nature of this entire application, the fact that there were irregularities and which, you know, the commission here admits to, but I do believe that both sides, the public and the developer, as well as this commission, deserves, it'll probably never be put to rest quite frankly, but sending it on to legal will put some type of closure on it and some kind of statement and I think everybody deserves that, so I appreciate Renata going forward with that and then we will see what happens when the statement comes back. But I have something else if we are done with this.

Chairman Sadil: I think we can proceed. Thank you.

Councilor Budrejko: Ok. Actually, it's just, it's not really from the council, but since you were talking about a building at Pane Road today; in today's Courant there's another application that's coming about for Pane Road for 152 apartments. Is that going to come before this commissioner as well? It seemed to imply that it wasn't only going to go to TPZ.

Mr. Hinckley: It's only TPZ, there's no wetlands on that site.

Councilor Budrejko: Ok. Thank you.

Chairman Sadil: Ok. I think we're ready to proceed. Item C. Pond Life Research and Education.

C. Pond Life Research And Education

Mr. Hinckley: Alan is not here to discuss online research.

Chairman Sadil: Um, I guess if there's any further comments please respond to the commission, I know there's somebody out there. So...

Commissioner Bachand: Is this regarding pond life, Mr. Chairman.

Chairman Sadil: Yeah, I believe Alan is not here, do you have a comment, would you like to make a...

Commissioner Bachand: Yeah, I took a walk around Mill Pond the other day and I saw they were doing some of their trimming and I didn't see anything, you know, that I was opposed to. So I just wanted to mention that I did see they're doing some of the maintenance there.

Chairman Sadil: Ok. Thank you for the observations. All right, on to Item IX. Adjournment. May I have a motion to adjourn?

IX. ADJOURNMENT

Motion to adjourn the meeting at 8:27 p.m. by Commissioner Casasanta. Seconded by Commissioner Bachand. Motion passed unanimously.

Respectfully submitted,

Susan Gibbon
Recording Clerk